



Senate

General Assembly

File No. 614

February Session, 2022

Senate Bill No. 382

Senate, April 25, 2022

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING A CONNECTICUT NEW MARKET TAX CREDIT PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2022*) (a) As used in this section:
- 2 (1) "CHEFA Community Development Corporation" means the
- 3 community development corporation established as a subsidiary of the
- 4 Connecticut Health and Educational Facilities Authority pursuant to
- 5 subsection (k) of section 10a-179 of the general statutes;
- 6 (2) "Community benefits" means activities that address a low-income
- 7 community's needs and social and economic priorities, primarily
- 8 through (A) the creation or retention of quality and accessible jobs, as
- 9 determined by the CHEFA Community Development Corporation,
- 10 within such community, (B) increasing access to high-quality goods or
- 11 services or healthy food for residents of such community, or (C) the
- 12 making or facilitation of environmental improvements to such
- 13 community;

14 (3) "Community business" means:

15 (A) Any organization exempt from taxation pursuant to Section
16 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent
17 corresponding internal revenue code of the United States, as amended
18 from time to time, that is located in the state and for which (i) a
19 substantial portion of the use of the tangible property of such business,
20 whether owned or leased, is within a low-income community, and (ii) a
21 substantial portion of the services performed for such business by its
22 employees are performed in a low-income community; or

23 (B) A subsidiary of such organization, which subsidiary (i) is located
24 in the state, (ii) satisfies the provisions of subparagraphs (A)(i) and
25 (A)(ii) of this subdivision, and (iii) has as its purpose the furtherance of
26 the charitable mission of the organization;

27 (4) "Community development entity" means a corporation or limited
28 liability company that (A) has a primary mission of serving or providing
29 capital for low-income communities or residents of low-income
30 communities, and (B) maintains accountability to residents of low-
31 income communities through such residents' representation on any
32 governing board of such entity or any advisory board of such entity;

33 (5) "Eligible costs" means, for purposes of the provision of a
34 community benefit: (A) Capitalization required for a program that is
35 developed, sponsored or managed by a community business and that
36 benefits a low-income community; (B) the costs (i) of construction and
37 for the acquisition of lands, structures, real or personal property, rights,
38 rights-of-way, franchises, easements and interest, necessary for a
39 project, (ii) of the demolition or removal of any buildings or structures
40 on land so acquired, and (iii) for the acquisition of any land to which
41 such buildings or structures may be moved; (C) the costs for (i) the
42 acquisition of machinery and equipment, (ii) the provision of working
43 capital, and (iii) enlargements, additions, extensions, replacements,
44 renovations and improvements; (D) the costs of engineering, financial
45 and legal services and for plans, specifications, studies, surveys and
46 estimates of costs and revenues; and (E) administrative expenses,

47 expenses necessary or incident to determining the feasibility or
48 practicability of constructing a project and such other expenses as may
49 be necessary or incident to (i) the construction and acquisition of a
50 project, (ii) the financing of such construction or acquisition, and (iii) the
51 placing of a project in operation;

52 (6) "Low-income community" means a census tract in the state for
53 which (A) the poverty rate for such tract is at least twenty per cent, (B)
54 the median family income for such tract, if such tract is not located in a
55 metropolitan area, does not exceed eighty per cent of the state-wide
56 median family income, or (C) the median family income for such tract,
57 if such tract is located in a metropolitan area, does not exceed eighty per
58 cent of the greater of the state-wide median family income or the
59 metropolitan area median family income;

60 (7) "Project" means a building or structure owned in its entirety by, or
61 suitable for use in accordance with the charitable mission of, a
62 community business, including machinery, equipment and other
63 similar items necessary or convenient for the operation of the building,
64 structure or community business;

65 (8) "Qualified community development entity" means a community
66 development entity that is certified by the CHEFA Community
67 Development Corporation that such entity satisfies the requirements of
68 subdivision (4) of this subsection and is eligible to receive equity
69 investments under this section;

70 (9) "Qualified equity investment" means an equity investment,
71 acquired at its original issuance on or after July 1, 2022, solely in
72 exchange for cash, in a qualified community development entity and
73 that is designated as a qualified equity investment by the CHEFA
74 Community Development Corporation pursuant to subsection (b) of
75 this section; and

76 (10) "Qualified low-income community investment" means an equity
77 investment in or a loan to a community business.

78 (b) There is established a Connecticut new markets tax credit
79 program to stimulate economic development in low-income
80 communities. The CHEFA Community Development Corporation shall
81 adopt written procedures in accordance with section 1-121 of the general
82 statutes to establish any requirements of the program and to implement
83 the provisions of this section.

84 (1) (A) Any taxpayer may make an equity investment in a community
85 development entity for the calendar years 2023 and 2024. For said
86 calendar years, the CHEFA Community Development Corporation may
87 designate an equity investment in a qualified community development
88 entity as a qualified equity investment and the holder of such equity
89 investment shall be eligible for a credit against the tax imposed under
90 chapter 207, 208, 208a, 209, 210, 211 or 212a of the general statutes or
91 section 38a-743 of the general statutes, in accordance with the provisions
92 of subsection (d) of this section.

93 (B) The aggregate amount of qualified equity investments designated
94 under this section shall not exceed twenty-five million dollars for
95 calendar year 2023 and twenty-five million dollars for calendar year
96 2024.

97 (2) The CHEFA Community Development Corporation may form
98 one or more subsidiaries for the purposes of serving as a qualified
99 community development entity. Any such subsidiary may be organized
100 as a stock or nonstock corporation or a limited liability company. The
101 CHEFA Community Development Corporation shall adopt a resolution
102 prescribing the purposes for which such subsidiary is formed and the
103 powers of the CHEFA Community Development Corporation such
104 subsidiary shall have and may exercise.

105 (3) Each qualified community development entity shall use
106 substantially all of the cash purchase price of a qualified equity
107 investment, within twelve months of the date of issuance of such
108 investment, to make qualified low-income community investments in a
109 community business or businesses. Thereafter, each qualified
110 community development entity shall maintain not less than eighty-five

111 per cent of such cash purchase price in qualified low-income community
112 investments in a community business or businesses for the term of the
113 qualified equity investment.

114 (c) (1) Any community business may apply to the CHEFA
115 Community Development Corporation for approval as a business
116 eligible to receive qualified low-income community investments under
117 this section. The application shall include (A) the name of the business
118 and a copy of the organizational documents of such business, (B) a
119 description of the community benefit such business provides or seeks to
120 provide, (C) a description of the eligible costs for which the community
121 business will use the proceeds of the qualified low-income community
122 investment and the expected amount of such eligible costs, and (D) such
123 other information as the CHEFA Community Development
124 Corporation may require.

125 (2) Any community business that receives a qualified low-income
126 community investment shall use the proceeds of such investment for
127 eligible costs. The aggregate amount of qualified low-income
128 community investments made in any community business shall not
129 exceed forty per cent of the expected eligible costs or five million dollars,
130 whichever is less.

131 (d) (1) The credit allowed under this section may be claimed as
132 follows: (A) For the income year in which a qualified equity investment
133 is made and for the next succeeding two income years, five per cent of
134 the amount of the qualified equity investment; and (B) for each of the
135 next succeeding four income years, six per cent of the amount of the
136 qualified equity investment.

137 (2) If any credit or any portion of a credit allowed under this section
138 is not used because the amount of the credit exceeds the tax due and
139 owing by the taxpayer, the unused amount may be carried forward for
140 the five immediately succeeding income years or until the full credit has
141 been claimed, whichever occurs earlier.

142 (3) Any taxpayer allowed a credit under this section may sell, assign

143 or otherwise transfer such credit, in whole or in part, to one or more
144 taxpayers, provided such credit may not be sold, assigned or transferred
145 more than three times.

146 (4) Any taxpayer allowed a credit under this section may be subject
147 to a credit recapture if (A) the community development entity ceases to
148 be a qualified community development entity, (B) the qualified low-
149 income community investment ceases to be used for the purposes of
150 providing a community benefit, (C) a qualified low-income community
151 investment is repaid or returned to a qualified community development
152 entity, or (D) a qualified equity investment is repaid or returned to the
153 holder of such qualified equity investment.

154 (e) (1) Not later than forty-five days after the CHEFA Community
155 Development Corporation designates an equity investment as a
156 qualified equity investment pursuant to subsection (b) of this section,
157 said corporation shall submit a form to the Department of Revenue
158 Services, in a form and manner prescribed by the Commissioner of
159 Revenue Services, that includes the date of issuance and the amount of
160 the qualified equity investment, the identity of the taxpayer that holds
161 such qualified equity investment and such other information the
162 department deems necessary.

163 (2) After the CHEFA Community Development Corporation
164 designates its first qualified equity investment under subsection (b) of
165 this section, said corporation shall submit a quarterly report to the
166 Department of Revenue Services that includes the amounts of qualified
167 low-income community investments made, the dates such qualified
168 low-income community investments were made and verification that
169 the qualified low-income community investments were made, and
170 continue to be invested, in eligible community businesses.

171 (f) If the CHEFA Community Development Corporation or the
172 Commissioner of Revenue Services determines that a recapture of a
173 credit or a portion of a credit allowed under this section is warranted,
174 the commissioner shall notify the affected taxpayer of the proposed
175 recapture. The affected taxpayer shall have ninety days after receipt of

176 such notice to cure any deficiency noted in the commissioner's recapture
177 notice. If the affected taxpayer fails or is unable to cure the deficiency,
178 the commissioner shall issue a final order of recapture to the affected
179 taxpayer that includes the amount and any penalty and interest to be
180 recaptured on such taxpayer's next tax return required to be filed, and
181 shall provide a copy of such final order to the CHEFA Community
182 Development Corporation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2022	New section

FIN *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Department of Revenue Services	GF - Revenue Loss	None	Up to \$1.3 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which establishes a Connecticut New Markets Tax Credit program for qualified investments made for the 2023 and 2024 calendar years,¹ results in a General Fund revenue loss of up to \$1.3 million in FY 24.

The Out Years

The bill results in General Fund revenue losses of up to \$2.5 million in FY 25 and FY 26, up to \$2.8 million in FY 27, up to \$3 million from FY 28 through FY 30, and up to \$1.5 million in FY 31.

¹ The bill caps the total amount of eligible investments that may be designated for tax credits at \$25 million in each of these years.

OLR Bill Analysis**SB 382*****AN ACT CONCERNING A CONNECTICUT NEW MARKET TAX CREDIT PROGRAM.*****SUMMARY**

This bill establishes a Connecticut New Markets Tax Credit (NMTC) program, administered by the Connecticut Health and Educational Facilities Authority (CHEFA) Community Development Corporation (CDC), to stimulate economic development in low-income communities. Under the program, private investors making qualified equity investments (QEI) through a qualified community development entity (CDE) may receive state business tax credits equal to 39% of their investment, subject to the bill's conditions. The credits may be claimed over a seven-year period.

The bill requires these qualified CDEs to use these private investments to invest in or provide loans to eligible nonprofits (i.e., community businesses), which the bill refers to as qualified low-income community investments (QLICIs). The community businesses must, in turn, use the QLICIs for activities that address a low-income community's needs and social and economic priorities. This may include (1) capitalizing a program that benefits the community, (2) financing the costs of certain capital projects, and (3) providing working capital.

Under the bill, the credit-eligible investments must be made for the 2023 and 2024 calendar years. The bill caps the total amount of QEIs that the CHEFA CDC may designate for tax credits at \$25 million in each of these years.

The CHEFA CDC must adopt written procedures to implement the program and set any requirements, in accordance with the law

governing the adoption of procedures by quasi-public agencies.

EFFECTIVE DATE: July 1, 2022

COMMUNITY DEVELOPMENT ENTITIES

Under this program, CDEs are the intermediaries between investors and the community businesses serving low-income communities. A “CDE” is a corporation or limited liability company (LLC) that (1) has a primary mission of serving or providing capital for low-income communities, as described below, or their residents and (2) maintains accountability to the communities’ residents through their representation on its advisory or governing board. Under the bill, the CHEFA CDC must certify that a CDE satisfies these criteria and is thus eligible to receive equity investments under the program (i.e., “qualified CDEs”).

The bill authorizes the CHEFA CDC to form one or more subsidiaries, organized as an LLC or stock or nonstock corporation, to serve as a qualified CDE. The CHEFA CDC must adopt a resolution prescribing the purposes for which the subsidiary is formed and the powers of the CHEFA CDC that the subsidiary has and can exercise.

QUALIFYING LOW-INCOME COMMUNITIES

Under the bill, a “low-income community” is a census tract that meets at least one of the following criteria:

1. a poverty rate of at least 20%;
2. is located in a metropolitan area and has a median family income of 80% or less of either the statewide or metropolitan area median family income, whichever is greater; or
3. is located outside a metropolitan area and has a median family income of 80% or less of the statewide median family income.

These same criteria apply when determining the eligible low-income communities under the federal NMTC program (see BACKGROUND).

QUALIFIED INVESTMENTS

For the 2023 and 2024 calendar years, the bill allows any taxpayer to make an equity investment in a CDE. For those years, the CHEFA CDC may designate an equity investment in a qualified CDE as a QEI. A “QEI” is an equity investment made on or after July 1, 2022, solely in exchange for cash, in a qualified CDE. (Although the bill specifies that these investments are made on or after July 1, 2022, the credit-eligible investments must be made in the 2023 and 2024 calendar years.) The bill caps at \$25 million the aggregate amount of QEIs the CHEFA CDC may designate in each of these years.

Qualified CDEs must use substantially all of the QEI’s cash purchase price, within 12 months after the investment’s issuance, to make QLICIs (i.e., equity investments or loans in a community business or businesses; see below). Thereafter, each qualified CDE must maintain at least 85% of the QEI’s cash purchase price in QLICIs for the QEI’s term.

COMMUNITY BUSINESSES

Under the bill, a “community business” is a 501(c)(3) federally tax-exempt organization located in Connecticut (1) that has a substantial portion of its tangible personal property (owned or leased) in a low-income community and (2) whose employees perform a substantial portion of services in a low-income community. It includes any subsidiary of the organization that (1) is located in Connecticut, (2) meets these criteria, and (3) has a purpose to further the organization’s charitable mission.

Application

Community businesses may apply to the CHEFA CDC for approval as a business eligible to receive QLICIs. The application must include:

1. the business’s name and a copy of its organizational documents,
2. a description of the community benefit (as described below) the business provides or seeks to provide,
3. the expected amount and description of the eligible costs for

which the business will use the QLICI proceeds, and

4. any other information the CHEFA CDC requires.

Eligible Costs. Community businesses receiving a QLICI must use the proceeds for eligible costs. The total amount of QLICIs a community business can receive is limited to the lesser of 40% of the expected eligible costs or \$5 million.

“Eligible costs” are the following:

1. capitalization required for a program a community business develops, sponsors, or manages and that benefits a low-income community;
2. the costs of constructing and acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interest necessary for a project (as described below), including demolishing or removing any buildings or structures on acquired land and acquiring land to which they may be moved;
3. the costs for (a) acquiring machinery and equipment; (b) providing working capital; (c) enlargements, additions, extensions, replacements, renovations, and improvements; and (d) engineering, financial, and legal services for plans, specifications, studies, surveys, and estimates of costs and revenues; and
4. administrative expenses, expenses necessary or incident to determining a project’s feasibility or practicability, and any other expenses necessary or incident to project (a) construction and acquisition, (b) financing, and (c) operations.

Project

The bill defines “project” as a building or structure owned by a community business or suitable for use according to its charitable mission. It includes machinery, equipment, and other similar items

necessary or convenient for operating the building, structure, or community business.

Community Benefits

Under the bill, the eligible costs for which community businesses may use QLICs must provide a “community benefit.” These are activities that address a low-income community’s needs and social and economic priorities, primarily through the following:

1. creating or retaining quality and accessible jobs in the community, as determined by the CHEFA CDC;
2. increasing access to high-quality goods or services or healthy food for the community’s residents; or
3. making or facilitating environmental improvements to the community.

TAX CREDITS

Credit Claims and Allowance

Under the bill, QEI holders are eligible for a credit against the following business taxes: insurance premiums tax; corporation business tax; unrelated business income tax; air carriers tax; railroad companies tax; cable, satellite, and video companies tax; public service companies tax; and surplus lines brokers tax. Taxpayers may claim the credits over a seven-year period in an amount equal to (1) 5% of the QEI for the income year in which the investment is made and for the following two income years and (2) 6% of the QEI for the next four income years (i.e., 39% total).

Taxpayers may carry forward unused credits for up to five succeeding income years, until fully used, and transfer the credits, in whole or part, to other taxpayers up to three times.

Credit Administration

Within 45 days after designating a QEI, the CHEFA CDC must submit a form to the Department of Revenue Services (DRS) providing

(1) the investment's amount and issuance date, (2) the identity of the taxpayer holding the investment, and (3) any other information DRS deems necessary. The DRS commissioner must prescribe the form and manner for this submission.

Credit Recapture

The credits are subject to recapture under the following conditions:

1. the CDE ceases to be a qualified CDE,
2. the QLICI ceases to be used to provide a community benefit,
3. a QLICI is repaid or returned to a qualified CDE, or
4. a QEI is repaid or returned to the investment's holder.

If the CHEFA CDC or DRS commissioner determines that a recapture of all or part of a credit is warranted, it must notify the affected taxpayer. If the taxpayer cannot or does not correct the deficiency within 90 days after receiving this notice, the DRS commissioner must issue a final recapture order that includes the amount, including any penalty and interest, to be recaptured on the taxpayer's next required tax return filing. He must provide a copy of this final order to the CHEFA CDC.

Quarterly Report

The bill requires the CHEFA CDC to submit quarterly reports to DRS beginning after it designates its first QEI. The reports must include (1) the amount and date of each QLICI made and (2) verification that these investments were made and continue to be invested in eligible community businesses.

BACKGROUND

Federal NMTC Program

The federal NMTC program uses federal income tax credits to attract private capital for projects in low-income communities. Under this program, qualified investment groups, known as CDEs, apply to the U.S. Department of Treasury's Community Development Financial

Institutions Fund (CDFI) for an allocation of the NMTCs. The CDEs seek taxpayers to make QEIs in the CDEs. The CDE then makes equity investments in qualified low-income communities and low-income community businesses. The tax credit's value is 39% of the cost of the QEI and is claimed over a seven-year period. Investors must retain their interest in a QEI throughout this period.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 51 Nay 0 (04/05/2022)